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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44648
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2012-17869
v.)	
)	
TERESA LEE TOLLMAN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE MELISSA MOODY
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Teresa Tollman contends the district court erred when it denied her application for a restricted driver's license. She asserts that, although the district court stated it would like to grant Ms. Tollman's request, the district court mistakenly concluded it did not have authority to do so. A proper application of Idaho decisional law to the relevant statute reveals that the district court did, in fact, have authority to grant Ms. Tollman's request under the 2015 amendment to that statute. Since the district court failed to appreciate the outer bounds of its discretion in that regard, this Court should reverse the order denying Ms. Tollman's application for a restricted driver's license and remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

Ms. Tollman pled guilty to felony driving under the influence (*hereinafter*, DUI) and, on March 1, 2013, the district court imposed a unified sentence of ten years, with two and one-half years fixed. (Supp. R., pp.35-36.)¹ As part of that sentence, the district court ordered Ms. Tollman's driver's license "be absolutely suspended for five (5) years, to commence upon the date of the defendant's [release from custody]." (Supp. R., p.36; see R., p.16.) On March 16, 2016, Ms. Tollman filed an application requesting a restricted driver's license. (R., p.10.) The district court concluded that I.C. § 18-8005(6)(d) requires at least one year of absolute suspension of driving

¹ This Court augmented the appellate record in this case with the record prepared in Docket No. 40907 (Ms. Tollman's prior appeal challenging the imposition of sentence and the denial of her I.C.R. 35 motion for leniency). References to the record from the prior appeal will be identified as "Supp."

privileges, and “[i]t is the burden of the movant (here, the Defendant) to show that that year has elapsed and the Defendant is eligible for restricted privileges.” (R., pp.17-18.) However, “[t]he Defendant has provided no proof that she is eligible for restricted privileges,” and so, the district court denied her application for the restricted license at that time. (R., p.18.)

Based on that order, Ms. Tollman waited until she had completed her first year of release before she renewed her application for a restricted driver’s license on September 12, 2016. (R., p.24.) She attached an “Offender Profile” from the Department of Correction to that application which documented the fact that she had been released on parole on August 4, 2015. (R., p.26.) In a letter accompanying that application, Ms. Tollman explained the request was based on, for example, the fact that her transportation costs associated with her work were becoming overly-burdensome. (R., pp.21-22.) Additionally, the Department of Correction sent a Special Progress Report to the district court confirming that Ms. Tollman was complying with the terms of her parole, and that she had been a contributing member of society during her release. (R., pp.32-33.) In that report, her parole officer stated that Ms. Tollman “has fulfilled all the requirements of her supervision necessary to make this request” for a restricted driver’s license. (R., p.34.)

The district court indicated that, based on Ms. Tollman’s performance on parole, it would normally be willing to grant the request for a restricted license. (Tr., p.11, Ls.2-4.) However, the district court determined it did not have the authority to do so in Ms. Tollman’s case. (Tr., p.6, Ls.6-13.) The district court explained that, originally, the relevant statute – I.C. § 18-8005(6)(d) – provided the district court should suspend a

person's driving privileges "for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time, he shall have absolutely no driving privilege of any kind." (R., p.17.) However, that statute had been amended in 2015 to clarify that, during the first year, there was to be an absolute suspension of privileges, but that the defendant "may have his driving privileges suspended by the court for an additional period not to exceed four (4) years, during which the defendant may request restricted driving privileges" (R., p.17.) The district court determined that, since the order suspending Ms. Tollman's driving privileges had been entered prior to the 2015 amendment, the pre-2015 version of the statute controlled Ms. Tollman's request, and, since (unlike the amended version) the pre-2015 version of the statute only provided for an absolute suspension of privileges, the district court concluded it did not have authority to grant Ms. Tollman's request for restricted driving privileges. (See Tr., p.8, Ls.1-19.)

However, the district court also encouraged Ms. Tollman to consider appealing its ruling. (See Tr., p.8, Ls.4-16.) Ms. Tollman did so, as she ultimately filed a Notice of Appeal timely from the order denying her most recent application for a restricted driver's license. (R., pp.36, 40.)

ISSUE

Whether the district court had discretion to grant Ms. Tollman's application for a restricted driver's license.

ARGUMENT

The District Court Had Discretion To Grant Ms. Tollman's Application For A Restricted Driver's License

Interpretation of a statute is a question of law which the appellate courts review *de novo*. *State v. Schulz*, 151 Idaho 863, 865 (2011). Additionally, when reviewing a discretionary decision, the appellate courts assess whether the lower court perceived the issue as one of discretion, whether it acted within the outer boundaries of that discretion, and whether it reached that decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989). As a result, “when a trial court has unduly narrowed the scope of its discretion through a misapprehension of applicable law, the proper course is for the appellate court to remand the case so that the trial court can make the discretionary decision anew, in light of the proper legal standards governing the decision.” *State v. Hansen*, 130 Idaho 845, 848 (Ct. App. 1997). Since the district court failed to recognize that the 2015 amendment to I.C. § 18-8005(6)(d) controls the analysis of Ms. Tollman's application for a restricted driver's license, and that it could, therefore, grant her request under that amendment, the district court's resulting decision to deny the requested relief constituted an abuse of its discretion.

Prior to the 2015 amendment, at the time Ms. Tollman's license was originally suspended (see Supp. R., p.35), the statute provided that, when the defendant has been convicted of felony DUI, the defendant:

Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind.

See 2015 Idaho Sess. Laws Ch. 60 (amendment indications omitted). The 2015 amendment, which was in effect at the time Ms. Tollman made her requests for restricted driving privileges (see R., p.24), clarified that when the defendant has been convicted of felony DUI, the defendant:

Shall have his driving privileges suspended by the court of a mandatory minimum period of one (1) year after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind, and may have his driving privileges suspended by the court of an additional period not to exceed four (4) years, during which the defendant may request restricted driving privileges that the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs

Id. (amendment indications omitted).

A proper application of Idaho decisional law reveals that, contrary to the district court's conclusion, the 2015 amendment to I.C. § 18-8005(6)(d) controls the analysis of Ms. Tollman's application for a restricted driver's license. While retroactive application of statutes is generally discouraged, "[a] statute is not made retroactive merely because it draws upon facts antecedent to its enactment. *Bryant v. City of Blackfoot*, 137 Idaho 307, 313 (2002). For example, amendments which are remedial or procedural in nature should control the analysis of an ensuing action even if the amendments are enacted after the events in question because "the effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future." *Id.*; accord *Floyd v. Bd. of Com'rs of Bonneville County*, 131 Idaho 234, 238 (1998) ("remedial and procedural statutes should be applied retroactively."). Basically, in those type of situations, the change in the law applies to ensuing decisions irrespective of what the result might have been under a previous version of the statute. See, e.g.,

State v. Johnson, 152 Idaho 41, 43-46 (2011) (holding that the defendant's request for an exemption from the sex offender registration requirements was governed by an amendment to the relevant statute which prohibited such an exemption, even though that amendment had not been enacted until after the defendant had completed his probation and his conviction had been dismissed); *Univ. of Utah Hosp. on behalf of Harris v. Pence*, 104 Idaho 172, 174 (1982) ("From [the date of the amendment] forward the appellant had fair notice of the new requirements of when an application [for relief] had to be filed . . .").

In fact, this rationale has been applied to amendments to other provisions of I.C. § 18-8005 itself, namely, the provisions governing enhancing certain violations of the statute to felonies based on repeated violations of the statute. Thus, when the Legislature increased the time in which the State could look back to find prior offenses upon which to base such an enhancement, and that amendment came into effect between the time a defendant was convicted of the prior offense and the time he committed the new offense, it was still the defendant's "own behavior that resulted in his 1995 DUI charge and caused the updated I.C. § 18-8005(7) to have an effect on the length of his sentence. Had [the defendant] not again chosen to drive under the influence, his prior DUIs would be irrelevant." *Wilson v. State*, 133 Idaho 874, 879-80 (Ct. App. 2000). In that case, the amended version of the statute controlled the analysis because that was the law at the time of the new cause of action, regardless of what the law might have allowed or required at the time of his prior conviction. See *id.* Since such amendments operate in that prospective manner, such amendments, including several to I.C. § 18-8005, have been repeatedly held to not violate the constitutional

protections in regard to due process or *ex post facto* laws. See, e.g., *Johnson*, 152 Idaho at 44-47; *State v. Lamb*, 147 Idaho 133, 135 (Ct. App. 2009); *Wilson*, 133 Idaho at 879-80; *State v. Nickerson*, 132 Idaho 406, 411-12 (Ct. App. 1999).

The 2015 amendment to I.C. § 18-8005(6)(d) operates in the same, prospective manner. It clarifies the procedure for the district court to follow when assessing new applications for restricted driving privileges, defining the remedy the district court is authorized to give in response to a satisfactory application for relief. Therefore, since the 2015 amendment prospectively defined the district court's authority in regard to requests for relief made after it was enacted, and Ms. Tollman made her request for restricted driving privileges more than a year after the 2015 amendment took effect, the district court had authority to grant Ms. Tollman's request for relief under the amended version of I.C. § 18-8005(6)(d).

Ergo, the district court failed to appreciate the outer bounds of its discretion, and so, its decision to deny Ms. Tollman relief should be reversed as an abuse of its discretion. Rather, it should have granted the relief it declared it was otherwise inclined to give based on Ms. Tollman's satisfactory performance on parole. (Tr., p.11, Ls.2-4.)

CONCLUSION

Ms. Tollman respectfully requests this Court reverse the order denying her application for a restricted driver's license and remand this case for further proceedings.

DATED this 5th day of April, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of April, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TERESA LEE TOLLMAN
10107 W TRESTLEWOOD STREET
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MELISSA MOODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas